HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 317(S/S) 2005

Ankur Agrawal S/o Sri Vinod Kumar Agrawal,
Resident Mohalla Hanumangarhi, Kosi Road,
Ramnagar, District Nainital. ---- Petitioner.

Versus

1. State of Uttaranchal through,
   Education Secretary, Department of Education,
   Dehradun.
2. Joint Director of Education, Kumaon Mandal, Nainital,
3. The Deputy Inspector of Schools,
   Nainital. ----Respondents.

Smt. Pushpa Joshi, learned counsel for the petitioner,
Learned Standing counsel for the State.

Hon'ble M.M. Ghildiyal, J.

Heard Smt. Pushpa Joshi, learned counsel for the petitioner and learned Standing Counsel for the State of Uttaranchal.

2. The present writ petition has been filed by the petitioner for the following reliefs:-

a. To issue a writ, order or direction in the nature of mandamus commanding the respondents to give the benefits to the petitioner as per Dying-in-harness rule within a reasonable period fixed by this Hon'ble Court,

b. To issue a writ, order or direction in the nature of mandamus commanding the respondents to give compassionate appointment to the petitioner, the dependent of deceased Vinod Kumar Agrawal within a reasonable period as permissible under the rules.

c. To issue any other writ, order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case.

d. To award cost of this writ petition to the petitioner.

3. Submission of the learned counsel for the petitioner is that the father of the petitioner died on 04.06.1992 and at the time of his death the deceased was working as Assistant Clerk in M.P. Hindu Inter College, Ramnagar, district Nainital.

4. From perusal of the letter dated 21.09.2004 (annexure no. 13) written by the Principal, M.P. Hindu Inter College, Ramnagar reveals that the recommendation of the Principal for providing appointment to the petitioner, under Dying-in-Harness Rules, was rejected by the District Inspector of Schools, Nainital on the ground that the application has been moved by the petitioner after expiry of 5 years of the death of his father.

5. Rule 5, Sub rule-1 (iii) of the U.P. Recruitment of Dependants of Government Servant Dying In Harness Rules 1974 (as applicable in State of Uttaranchal) provides that for claiming appointment under Dying-in-harness Rules, the heirs of the deceased may make application for employment within 5 years from the date of death of the Government servant. Since the application was moved by the petitioner after five years of the death of his father, in the present case the State Govt. can relax the time limit for making application under the Proviso of the aforesaid Rules.

6. Under the circumstances aforesaid, I think it just and proper to direct the District Education Officer, Nainital to send

the application of the petitioner to the Govt. for relaxation of time for making application as required under the aforesaid Rule-5 and the State Govt./respondent no. 1 shall take decision on the matter as early as possible, preferably within a period of three months from the date of receipt of the application through District Education Officer, Nainital.

7. With these direction, the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

July 13, 2006:
NCM: